



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOF- 173574

PRELIMINARY RECITALS

On April 11, 2016, the Office of Inspector General filed a hearing request under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review its decision to disqualify [REDACTED] [REDACTED] from the FoodShare/SNAP program for a period of one year.

This hearing was originally scheduled for May 24, 2016. The Respondent asked to reschedule the hearing, because she did not get the hearing notice or packet of exhibits. The hearing was rescheduled to June 14, 2016.

The hearing took place, as scheduled, on June 14, 2016, by telephone.

The issue for determination is whether the Respondent committed an Intentional Program Violation (IPV) by lying about her residence.

NOTE: The record was held open to allow OIG an opportunity to submit a CCAP print out, Voter Registration and a printout from EBT Data Warehouse regarding EBT cards issued to the Respondent. They have been marked as Exhibits 20, 21 and 22, respectively. The Respondent did not object.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Department of Health Services
Office of the Inspector General
P.O. Box 309
Madison, WI 53701

By: [REDACTED] Interstate Agent

Respondent:

[REDACTED]
[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE:

Mayumi Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On April 12, 2016, the OIG prepared an Administrative Disqualification Hearing Notice, alleging that between September 1, 2012 and May 31, 2014, the Respondent provided false information in order to receive SNAP (FoodShare benefits). (Exhibit 1)
3. On April 2, 2012, the Petitioner completed an ACCESS Change Report in which she indicated she was living in Milwaukee, Wisconsin. (Exhibit 6)
4. On August 28, 2012, the Respondent completed an ACCESS renewal in which indicated that she was living in Milwaukee, Wisconsin. The Respondent electronically signed the renewal, indicating that under penalty of perjury and false swearing, the information in the renewal was correct and complete. The renewal also warned the Petitioner of the penalties for violating program rules, including disqualification. The Respondent's electronic signature also indicated that she understood the penalties for giving false information or breaking the rules. (Exhibit 3)
5. On October 25, 2012, the Respondent completed an ACCESS Change Report form in which she again provided an address in Milwaukee, Wisconsin, but changed her phone number. (Exhibit 5)
6. On April 5, 2013, the Respondent completed an ACCESS Six Month Report Form (SMRF), in which the Respondent indicated that she still lived in Milwaukee, Wisconsin. The Respondent electronically signed the SMRF indicating that under penalty of perjury and false swearing that the information in the SMRF was correct and complete. (Exhibit 4)
7. As of at least July 2013, the Respondent was living in the State of Georgia. (Testimony of the Respondent)
8. On September 26, 2013, the Respondent completed an ACCESS renewal in which she indicated that she was living in Milwaukee, Wisconsin. The Respondent electronically signed the renewal, indicating that under penalty of perjury and false swearing that the information in the renewal was correct and complete. The renewal also warned the Petitioner of the penalties for violating program rules, including disqualification. The Respondent's electronic signature also indicated that she understood the penalties for giving false information or breaking the rules. (Exhibit 7)
9. On March 22, 2014, the Respondent completed an ACCESS renewal, in which she indicated she was living in Milwaukee, Wisconsin. The Respondent electronically signed the renewal, indicating that under penalty of perjury and false swearing that the information in the renewal was correct and complete. The renewal also warned the Petitioner of the penalties for violating program rules, including disqualification. The Respondent's electronic signature also indicated that she understood the penalties for giving false information or breaking the rules. (Exhibit 8)
10. The Respondent received FoodShare disbursements from September 6, 2012, through May 6, 2014. (Exhibit 12)
11. On an unspecified date, an EBT card ending in 7305 was issued to the Respondent. (Exhibit 22)

DISCUSSION

What is an Intentional Program Violation?

7 C.F.R. §273.16(c) states that Intentional Program Violations “shall consist of having intentionally: 1) Made a false or misleading statement or misrepresented facts; or 2) Committed an act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization card or any other reusable documents used as part of an automated delivery system (access device).”

The Department's written policy restates federal law, below:

3.14.1 IPV Disqualification

7 CFR 273.16

A person commits an Intentional Program Violation (IPV) when s/he intentionally:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts; or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

An IPV may be determined by the following means:

1. Federal, state, or local court order,
2. Administrative Disqualification Hearing (ADH) decision,
3. Pre-charge or pretrial diversion agreement initiated by a local district attorney and signed by the FoodShare recipient in accordance with federal requirements, or
4. Waiver of the right to an ADH signed by the FoodShare recipient in accordance with federal requirements.

FoodShare Wisconsin Handbook, §3.14.1.

The agency may disqualify only the individual who either has been found to have committed the IPV or has signed a waiver or consent agreement, and not the entire household. If disqualified, an individual will be ineligible to participate in the FS program for one year for the first violation, two years for the second violation, and permanently for the third violation. However, any remaining household members must agree to make restitution within 30 days of the date of mailing a written demand letter, or their monthly allotment will be reduced. 7 C.F.R. §273.16(b).

What is OIG's burden of Proof?

In order for the agency to establish that a FoodShare recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit an intentional program violation per 7 C.F.R. §273.16(e)(6).

"Clear and convincing evidence" is an intermediate standard of proof which is more than the "preponderance of the evidence"(a.k.a. "more likely than not") used in most civil cases and less than the "beyond a reasonable doubt" standard used in criminal cases.

In Kuehn v. Kuehn, 11 Wis.2d 15, 26 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. In criminal cases, while not normally stated in terms of preponderance, the necessary certitude is universally stated as being beyond a reasonable doubt.

Wisconsin Jury Instruction – Civil 205 is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that “yes” should be the answer because of its greater weight and clear convincing power. “Reasonable certainty” means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the “middle burden.” The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4th ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence, a firm conviction as to the existence of each of the two elements even though there may exist a reasonable doubt that the elements have been shown.

The Merits of OIG’s Case

In the case at hand, the Office of the Inspector General (OIG) asserts that the Respondent violated the rules of the FoodShare Program by lying about her residence between September 2012 through May 2014, in order to receive benefits in Wisconsin, when she was really a resident of the State of Georgia.

“A household shall live in the State in which it files an application for participation” in the food stamp program. 7 *CFR* §273.3(a)

In the case at hand, the Respondent testified that as of July 2013, she has been living in the State of Georgia. Exhibit 21 is a print out from the State of Georgia Voter Registration web page, indicating that the Respondent registered to vote in the State of Georgia in July 2013.

In September 2013 and March 2014, the Respondent completed renewals in which she claimed to be living in Wisconsin. The Respondent received Wisconsin FoodShare benefits, in part, because she provided that false information. Accordingly, it is found that the Respondent provided false information in order to receive FoodShare benefits in Wisconsin.

This, alone, is sufficient to uphold a one year disqualification from the FoodShare /SNAP program. As such, further review of the period of September 2012 through June 2013 is not necessary.¹

There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. See *John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). There is nothing in the record

¹ It is questionable whether OIG would prevail on that portion of the claim, anyway. After having gone through Exhibit 15 and Exhibit 17, it is clear that OIG did not provide all of the merchant information for all of the transactions contained in Exhibit 15, so at least half of the transactions cannot be connected to an out of state merchant.

to rebut the presumption that the Respondent intentionally lied about her residence, in order to obtain FoodShare benefits that she was not entitled to receive. Indeed, the Respondent was warned in each of the ACCESS Renewals she completed on August 28, 2012, September 26, 2012, and on March 22, 2014, about the penalties for providing false information, but after July 2013, she lied about her residence anyway.

CONCLUSIONS OF LAW

Contrary to 7 *CFR* §273.3(a) and 7 *CFR* 273.16, the Respondent committed an intentional program violation between July 2013 and May 2014, by providing false information about her residence in order to obtain FoodShare benefits that she was not entitled to receive in Wisconsin. This is the first such violation.

THEREFORE, it is

ORDERED

That the agency's determination is sustained, and that the agency may make a finding that the Respondent committed a first IPV of the FoodShare program and disqualify the Respondent from the program for one year, effective the first month following the date of receipt of this decision.

REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 12th day of July, 2016

\s _____
Mayumi Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 12, 2016.

Office of the Inspector General
Public Assistance Collection Unit
Division of Health Care Access and Accountability
[REDACTED]@wisconsin.gov